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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,135	09/29/2003	Michael J. Brookman	30552/39676A	5725

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EXAMINER	
LEWIS, AARON J	

ART UNIT	PAPER NUMBER
3743	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/675,135	BROOKMAN, MICHAEL J.	
	Examiner	Art Unit	
	AARON J. LEWIS	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1,3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Rieger (DE 3512644A1) in view of Hubner ('518).

The differences between Bartels & Rieger and claim 1 are means adapted to move said ambient air into said filter system, through said filter medium in said filter system and thence into operative relationship with a user of the apparatus.

Hubner, in a breathing apparatus, teaches means (1,4-6) adapted to move said ambient air into said filter system, through said filter medium in said filter system and thence into operative relationship with a user of the apparatus for the purpose of overcoming fluid flow resistance of the filter medium thereby relieving a user from having to expend an inordinate amount of energy in an effort to draw breathable air through the filter medium (col.7, lines 25-32).

It would have been obvious to modify the breathing apparatus of Bartels & Rieger to include a means to move ambient air through the filter medium because it would have overcome the fluid flow resistance of the filter medium thereby relieving a user from having to expend an inordinate amount of energy in an effort to draw breathable air through the filter medium as taught by Hubner.

As to claim 3, the face mask (see abstract) of Bartels & Rieger is adapted to tightly fit a wearer inasmuch as the breathing apparatus is intended for use in a noxious environment (i.e. used by firefighters).

As to claim 4, Bartels & Rieger (see figure) illustrates a first conduit means between said tank (11) and said face mask (i.e. at the terminal end of conduit 20), second conduit means between said filter/decontamination means (21) and said face mask, and valving means (19) operatively associated with said conduit means adapted to control the flow of cleaned air from said filter/decontamination means (21) or air from said tank (11) to said user. That is, the conduit extending between the tank and valve (19) constitutes a first conduit means while the conduit extending between filter (21) and valve (19) constitutes a second conduit means.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Rieger in view of Hubner as applied to claims 1,3,4 above, and further in view of O'Connor ('951).

The difference between Bartels & Rieger as modified by Hubner and claim 2 is plural filter/decontamination elements.

O'Connor, in a breathing apparatus, teaches plural filter/decontamination elements (11 and col.3, lines 30-42) for the purpose of increasing the filtering efficiency of the breathing device.

It would have been obvious to further modify the filter/decontamination element of Bartels & Rieger to include plural filter/decontamination elements because it would have increased the filtering efficiency of the breathing device as taught by O'Connor.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Rieger in view of Hubner as applied to claims 1,3,4 above, and further in view of Hilton et al. (EP 0 241 188A1).

The difference between Bartels & Rieger as modified by Hubner and claim 6 is a one way exhaust valve means associated with the face mask.

Hilton et al., in a breathing apparatus, teach a one way exhaust valve means (4) associated with the face mask for the purpose of venting exhaled gases within the face mask to the ambient without compromising the seal between the face mask and a wearer's face while working in a noxious environment (page 3, col.4, lines 14-18).

It would have been obvious to modify the face mask of Bartels & Rieger to include a one way exhaust valve means associated therewith because it would have provided a means for venting exhaled gases within the face mask to the ambient without compromising the seal between the face mask and a wearer's face while working in a noxious environment as taught by Hilton et al..

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/393,346. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 1 of the instant application and claim 1 of application ('346) lies in the fact that claim 1 of ('346) includes more elements and is thus more specific (e.g. electrically powered means for moving ambient air through the filter/decontamination unit; sensor means adapted to determine whether gas emerging from said medium is safely breathable and comprises at least 19% oxygen; means, operative associated with said sensor means, adapted to generate a signal that is adapted to advise a user whether said gas emerging from said medium has insufficient oxygen to be safely breathable; and means to, in response to said signal, open and/or close said valve(s)). Thus the invention of claim 1 of ('346) is in effect a "species" of the "generic" invention of claim 1 of the instant application. It has been held that the generic invention is "anticipated" by the "species". See In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since instant application claim 1 is anticipated by claim 1 of application ('346), it is not patentably distinct from claim 1 of application ('346).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant breathing devices for use in noxious environments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
December 05, 2004